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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,601	09/28/2001	Hans Braendle	622/43770CO	2035

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Washington, DC 20044-4300

EXAMINER

BLACKWELL RUDASIL, GWENDOLYN A

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 10/27/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/964,601

Applicant(s)

BRAENDLE ET AL.

Examiner

Gwendolyn A. Blackwell-Rudasill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-12 and 24-30 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 3,23 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 04 December 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to applicants' Supplemental Reply filed October 16, 2003 which crossed in the mail and was not considered in the Office Action mailed October 20, 2003. The period for response will restart and will be **two** months from the date of mailing of this Office Action.

Claim Objections

2. Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Dependent claim 3 requires that the Q_1 value is greater than or equal to 2. Independent claim 1 requires that the Q_1 value is greater than or equal to 5. Because the independent claim requires that the Q_1 value is greater than or equal to 5, a dependent claim cannot claim that the Q_1 value is greater than or equal to 2 as 2 is less than 5 which does not satisfy the limitations of claim 1.

3. Claim 23 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 23 does not further limit claim 1 as the Q_1 values in both claim is greater than or equal to 5 with no other differing limitations.

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4. Claim 31 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Response to Arguments

5. Applicant's arguments, see page 7, lines 19-20, filed August 4, 2003, with respect to claims 1-12 and 23-30 have been fully considered and are persuasive. The rejections under 35 USC §§102(e) and 103(a) of claims 1-12 and 23-30 have been withdrawn.

6. Applicant's amendments and arguments, see page 7, filed October 16, 2003, with respect to claims 1-12 and 23-30 have been fully considered and are persuasive. The rejections under non-statutory double patenting rejection of claims 1-2, 4-12, 25, and 27-30 have been withdrawn.

Allowable Subject Matter

7. Claims 1-2, 4-12, and 24-30 are allowed. The following is an examiner's statement of reasons for allowance:

Applicant has amended claim 1 to reflect that the Q_1 value is greater than or equal to 5. Including the limitation that the Q_1 value is greater than or equal to 5 amends the present claims out of the range of claim 1 as disclosed in United States Patent no. 6,274,249 thereby nullifying the non-statutory double patenting rejection.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

8. This application is in condition for allowance except for the following formal matters:

Amend or cancel claims 3, 23, and 31 to place in proper dependent form.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.


A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

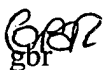
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn A. Blackwell-Rudasill whose telephone number is (703) 305-9741. The examiner can normally be reached on Monday - Thursday; 6:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on (703) 308-3822. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Gwendolyn A. Blackwell-Rudasill
Examiner
Art Unit 1775


DEBORAH JONES
SUPERVISORY PATENT EXAMINER


GBF